

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 977 of 1998

in

SPECIAL CIVIL APPLICATION No 3259 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL DINESHBHAI CHHAGANBHAI

Versus

SUPERINTENDENT REGIONAL PASSPORT OFFICE

Appearance:

MR DT SONI for Appellant

MR JAYANT PATEL for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/09/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Admitted. Mr. Jayant Patel, learned counsel appears and waives service of notice of admission on behalf of respondent. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This LPA arises out of an order passed by learned Single Judge in Special Civil Application No. 3259 of 1998 dated July 3, 1998. That petition was filed by the petitioner for appropriate writ, direction or order directing respondent authorities to correct his date of birth from February 18, 1956 to January 18, 1956. It was the case of the petitioner that though actually he was born on January 18, 1956, there was some mistake on the part of the school authorities in recording date of birth as February 18, 1956 instead of January 15, 1956. When application was made for the purpose of obtaining passport before the respondent authorities, the date of birth, as shown in the school leaving certificate, was mentioned as February 18, 1956. Relying on record of Local Authority, it was the case of the petitioner that his correct birth date was January 18, 1956 and accordingly it was required to be corrected. The authorities, in view of the fact that there was school leaving certificate also, did not oblige the petitioner by correcting it and that is how the petitioner was constrained to approach this Court.

Learned Single Judge dismissed the petition, inter alia, observing that if the contents of the affidavit made on behalf of the petitioner were correct, he should file Civil Suit in that behalf and he cannot invoke jurisdiction of this Court under Article 226 of the Constitution.

Mr. Soni, learned counsel for the appellant, contended that there was an error on the part of the school authorities and instead of correct date of birth, incorrect date of birth was mentioned and that is why on the basis of the certificate issued by the Local Authority, prayer was made before the passport authorities to get the birth date corrected by substituting his original date of birth at the place of incorrect date of birth. He submitted that in number of such cases this Court directed the authorities to correct the date of birth. In various cases this Court has also directed not only to correct the date of birth but even to correct the place of birth. One such order relied upon by learned counsel for appellant was in Special Civil Application No. 5271 of 1998 decided recently on July 22, 1998. In that case, date of birth as well as place of birth both shown were incorrect. Learned Single Judge issued direction to passport authority to correct them.

In the facts and circumstances of the case, in our

opinion, it would be appropriate if instead of directing the respondent authority to correct the birth date, a direction is issued to decide prayer made by the petitioner. Looking to the facts, it is clear that it was case of the petitioner that in school leaving certificate incorrect date of birth was mentioned and that is why he has also produced necessary certificate issued by the Local Authority. The Passport Authority will consider the same and, if satisfied, will correct the date of birth while disposing the application on its own merits.

Mr. Jayant Patel submitted that in such cases, the respondent authority may be awarded cost as it was not the fault on the part of the authorities that it had to appear in this Court. In an appropriate case such question will be considered. In the facts and circumstances of the case, in our opinion, it would not be proper to award cost. Hence, so far as this case is concerned, the prayer is not accepted.

In the result, the LPA is allowed. Order passed by learned Single Judge is set aside. The respondent authority will now decide the application within two weeks from the receipt of the writ. Direct service is permitted.
